

FILED
2018 MAY 7 PM 4:33
CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

ANGEL ROSA AND LORENA ROSA,

Plaintiff,

vs.

The UNITED STATES OF AMERICA;
JEFFREY SESSIONS, US Attorney General;
ELAINE C. DUKE, Acting Secretary of
Homeland Security; THOMAS D. HOMAN,
Acting Director of Immigration and Customs
Enforcement; ICE DOES 1-10; NICK N
employed by Utah County Jail; DR. TUBBS,
employed by Utah County Jail; and JOHN
DOE 1-10 Utah County Sheriff's Department
Employees,

Defendants.

Order Granting Motion to Dismiss

Case No. 1:17-cv-00163- ~~BSJ~~

Judge Bruce S. Jenkins

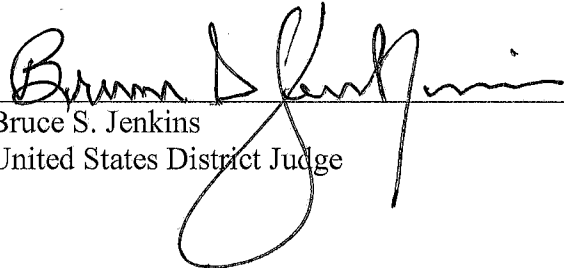
On April 26, 2018, the Court heard oral argument on Defendant Kennon Tubbs, M.D.'s Motion to Dismiss. Having read the parties' submissions and pleadings, reviewed the relevant case and statutory law, listened to oral argument, and otherwise being fully informed, this Court rules as follows:

1. Plaintiffs have failed to comply with the statutory preconditions to commencing a malpractice action against a health care provider, as required by the Utah Health Care Malpractice Act. *See* Utah Code § 78B-3-401 *et seq.*

2. Plaintiffs' Causes of Action Nos. 8, 9, and 10 against Dr. Tubbs alleging medical negligence arising out of Utah state law are, therefore, premature, and must be dismissed;
3. Plaintiffs' Cause of Action No. 11 for loss of consortium against Dr. Tubbs arising out of allegations of medical negligence under Utah state law is also premature, and must be dismissed.
4. The Court dismisses these cause of actions without prejudice.

Signed this 7th day of may, 2018.

BY THE COURT



Bruce S. Jenkins
United States District Judge

Approved as to form:

UTAH LEGAL CLINIC

/s/ Angela H. Elmore (with permission)
ANGELA H. ELMORE
Attorneys for Plaintiff

MYLAR LAW, PC

FRANK D. MYLAR
Attorneys for Defendants Nick Nielson and Kennon Tubbs, MD

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